Supreme Court, U.S.
FILED

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No. _____ OFFICE OF THE CLERK

In the
SUPREME COURT OF THE UNITED STATES
October Term, 1996

Leston Stallworth, Jr. Appellant, Pro Se

v.

State of Alabama, Appellee

On Petition for a Writ of Certiorari to the
Alabama Court of
Criminal Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether an extradition warrant that states no probable cause within it's purported affidavit can form a lawful basis as to the warrant's validity, that meet the requirements set forth in the fourth amendment to the constitution?

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IN THE SUPREME COURT OF THE UNITED STATES

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v.

State of Alabama, Appellee

PETITION FOR A WRIT OF CERTIORARI TO THE ALABAMA COURT OF CRIMINAL APPEALS

Leston Stallworth, Jr. respectfully petitions for a writ of certiorari to review the judgement of the Alabama Court of Criminal Appeals in this case.

OPINIONS BELOW

The opinions of the Alabama Court of Criminal Appeals are unreported.

JURISDICTION

The Alabama Court of Criminal Appeals entered it's judgement on August 22, 1997. The jurisdiction of this court is invoked under a question involving a federal issue.

CONSTITUTIONAL PROVISION INVOLVED

The fourth amendment to the constitution of the United States requires that no warrant for "Search or Seizure" shall issue without sufficient finding of probable cause.

STATEMENT

On March 22, 1996, the appellant was arrested in Monroe County, Alabama, pursuant to an outstanding California arrest warrant. On June 17, 1996, the Governor of Alabama issued a rendition warrant after receiving a requisition dated May 22, 1996, from the Governor of California. Included with the requisition was an affidavit in support of extradition, an affidavit entitled "Amended Felony Complaint for Extradition," and an amended arrest warrant. The appellant filed a petition for a writ of habeas corpus contesting the sufficiency of the extradition proceedings. After holding a hearing on the petition, the trial court denied the appellant's petition and the appellant gave notice of appeal. On April 18, 1997 the Court of Criminal Appeals upheld the Circuit Courts decision. Rehearing was overruled on May 23, 1997. On August 22, 1997, the State Supreme Court of Alabama denied a request for a writ of certiorari.

REASON FOR GRANTING THE PETITION

The fourth amendment to the constitution by way of the fourteenth amendment guarantees the right to be free from unreasonable searches and seizures were there is no finding of probable cause. The case at bar is a prime example. An extradition warrant for arrest (seizure) supported by an affidavit that states no probable cause was issued. The State Supreme Court of Alabama acknowledges that Art. IV, Section 2, prevents an asylum state from "reviewing the determination" of the requesting state. This case affords this court the opportunity to ensure the rights guaranteed by the fourth amendment to the constitution, and provide guidance and power to the lower courts.

I. THE DECISION OF THE COURT OF APPEALS IS ERRONEOUS

The Court of Criminal Appeals has rules in a least two prior opinions (**Johnson v. State,** 425 So.2d 515 (1982), and **Battles v. State,** 389 So.2d 957 (1980)), that in extradition proceedings the supporting affidavit submitted by the requesting state cannot be made after the issuance of the initial warrant of arrest in the requesting state. These decisions are based upon sound logic in that the issuance of an arrest warrant must be based upon the presentation by affidavit of the specific facts constituting the alleged criminal offense; otherwise, the arrest warrant could be issued at the mere whim of a magistrate, or for other improper purposes, or improper motives. **Rayburn v. State,** 366 So.2d 708 (Ala.Cr.App 1979).

In the case at bar, the State argues that the supporting affidavit was made prior to the issuance of the initial warrant of arrest in California. However, this argument is without merit for the following two reasons:

California Designates "Affidavit" dated April 18, 1996

The State of California itself, in the documents admitted into evidence in the Circuit Court, identifies and enumerates an "affidavit" (CR31), and the only "affidavit" referred-to in the record is dated April 18, 1996, well after the issuance of the initial warrant of arrest. Instead, the State argues that the "affidavit" supporting the extradiction request is what the State of California has designated as a "Complaint" (CR 30-31, 54-57), and which is only a generalized, conclusory statement of the formal charges against the Petitioner, containing no specific or supporting information whatsoever.

If the State of California has intended the "Complaint" to be the "affidavit" supporting the extradition request, there would have been absolutely no reason for the California officials to compile and file the detailed "Affidavit" on April 18, 1996, well after the issuance warrant of arrest. The State is not allowed to "correct" deficiencies in the California documentation by mischaracterizing the "complaint" as the "affidavit." Instead, the courts of this State are bound by the designations made by the State of California in its proceedings, and the only "affidavit" comes well after the issuance of the warrant of arrest.

Complaint Cannot be "Affidavit" in Extradition Proceedings

The State also argues that the "affidavit" supporting the extradition request is the "Amended Felony Complaint for Extradition," which does not give any specific factual information, but only amounts to generalized allegations against the Petitioner. The complaint does not give any specific information regarding the affiant's knowledge of the subject matter, or the source of his knowledge, and it does not give any information as to how the alleged criminal offense was committed. It is simply not an "affidavit" within the contemplation of the extradition statutes. **Rayburn v. State**, 366 So.2d 708 (Ala.Cr.App 1979).

Lastly, the State argues that the purported finding of probable cause by the California magistrate upon the filing of the "Amended Felony Complaint for Extradition" precludes any inquiry into the matter of the sufficiently of the supporting affidavit. This is not a correct statement of the law. If a sufficiently detailed "affidavit" had been filed with the "Amended Felony Complaint for Extradition," and if the California magistrate had made a finding for probable cause thereon, the State's position would be correct. In **Johnson v. State**, 425 So.2d 515 (1982), the Court of Criminal Appeals denied an extradition request

when the supporting affidavit was made after the warrant of arrest, even though a North Carolina magistrate had made a finding of probable cause when the warrant was issued. This is precisely the fact situation presented in the case at bar, and **Johnson** is still good law. The Court of Criminal Appeals must be uniform in the application of the law and its own authority.

II. THE QUESTION PRESENTED IS IMPORTANT

The right of individuals to be safe and secure in their personal belongings, is the primary purpose of the fourth amendment to the Constitution, this amendment allows for numerous checks and balances throughout the judicial system to insure that these rights are protected. To bar review at any stage, when clear injustice is apparent is contrary to the purpose the framers of the constitution had in mind. A finding of probable cause by a neutral magistrate of a requesting state, when there is clearly no probable cause present should not bar a asylum state from upholding and protecting an individual's right. In a majority of all other types of "search and Seizure" warrants, probable cause has consistently been reviewable throughout the judicial process. To exclude an extradition warrant from this process as the State Supreme Court of Alabama has done, is an open invitation for the issuance of warrants lacking sufficient probable cause. It is appellant position that extradition warrant should be held to the same standard as all other warrants, in order to meet the constitutional requirements of the fourth amendment.

In sum, uniformity is needed in required on this matter. Therefore, the court should grant the petition.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted

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APP. 1

Appendix A

Leston Stallworth Jr., Appellant

v.

State of Alabama, Appellee

No. 96 - 69

State of Alabama
Court of Criminal Appeals

Decided April 18, 1997

On March 22, 1996, the appellant was arrested in Monroe County, Alabama, pursuant to an outstanding California arrest warrant. On June 17, 1996, the Governor of Alabama issued a rendition warrant after receiving a requisition dated May 22, 1996, from the Governor of California. Included with the requisition was an affidavit in support of extradition, an affidavit entitled "Amended Felony Complaint for Extradition," and an amended arrest warrant. The appellant filed a petition for a writ of habeas corpus contesting the sufficiency of the extradition proceedings. After holding a hearing on the petition, the trial court denied the appellant's petition and the appellant gave notice of appeal.

I

The appellant argues that he should be discharged from custody because the affidavit upon which the arrest was issued was not in existence at the time the warrant was issued. The affidavit entitled "Amended Felony Complaint for Extradition' and the amended arrest warrant were dated March 26, 1996. The affidavit in support of extradition is dated April 18, 1996. Therefore, the appellant has erroneously cited the latter affidavit as being the affidavit pursuant to which the warrant was issued. Section 15-9-31 of the Alabama Code requires that the extradition demand be accompanied by a "copy of an indictment found, or by an information supported by affidavit, in the state having jurisdiction of the crime or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereon." In this case, the State of California sent an affidavit and the warrant issued thereon. The affidavit entitled "Amended Felony Complaint for Extradition, " which immediately precedes the amended arrest warrant in the record, is clearly the affidavit pursuant to which the amended warrant was issued. As reflected by the appellant's second argument, the appellant is well aware that the affidavit, not the later one,

is the one pursuant to which the amended arrest warrant was issued. The appellant's argument is thus without merit.

II

The appellant also argues that he should be discharged from custody because the "Amended Felony Complaint for Extradition," the affidavit upon the amended arrest warrant was issued, is insufficient under §15-9-31 and §15-9-33 of the Code of Alabama. The magistrate in California specifically found that probable cause existed and authorized the issuance of the amended arrest warrant. "When a neutral judicial officer of the demanding state has determined that probable cause exists, the courts of the asylum state are without power to review the determination." Johnson v. State, 439 So.2d 1352 (Ala. Cr. App. 1983) (quoting Michigan v. Doran, 439 U.S. 282, 290, 99 S.Ct. 530, 58 L.Ed.2d 521 (1978)). Therefore, this court is without jurisdiction to review the California court's determination that the affidavit was sufficient and that probable cause for the issuance of the amended arrest warrant existed. Cramer v. State, 480 So.2d 13 (Ala. Cr. App. 1985); Raley v. State, 455 So.2d 203 (Ala. Cr. App. 1984); Johnson v. State, 439 So.2d 1352 (Ala. Cr. App. 1983); Michigan v. Doran, 439 U.S. 282,

99 S.Ct. 530, 58 L.Ed.2d 521 (1978). The appellant's argument that he should be discharged from custody because the affidavit is insufficient is thus without merit.

All judges concur.